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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR 16-00462 CRB
	)	
Plaintiff,	)	UNITED STATES' POST-HEARING
	)	BRIEF REGARDING GAIN/LOSS
v.	)	
	)	
SUSHOVAN TAREQUE HUSSAIN,	)	
	)	
Defendant.	)	
	)	

**INTRODUCTION**

During the hearing regarding the Sentencing Guidelines, the Court expressed an interest in calculating the defendant's sentence based on gain rather than loss. In a fraud case, "[t]he court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined." U.S.S.G. § 2B1.1, Application Note 3(B). The government files this post-hearing brief to highlight that the calculation performed by the Court to ascertain gain would be equally applicable to the loss in this case – a point that the government unsuccessfully tried to describe during the hearing. Filed with this brief is the Declaration of Special Agent Alexandra Bryant, attached as Exhibit A, to support the

1 government's position that the Court's analysis of the proper measure of gain is equally  
2 applicable to a calculation of loss.

### 3 **ARGUMENT**

4 The Court suggested at the hearing that it could reasonably estimate the gain in this case  
5 by considering the gain to be the premium paid by Hewlett-Packard on the shares owned by  
6 defendant Sushovan Hussain.<sup>1</sup> The government's simple position is that – given the Court's  
7 estimate of gain – the premium paid by Hewlett-Packard on all shares would equally serve as a  
8 reasonable estimate of the loss to Hewlett-Packard. If the premium on the shares purchased is a  
9 reasonable estimate of gain, then it is also a reasonable estimate of loss. “The court need only  
10 make a reasonable estimate of the loss” to satisfy the Sentencing Guidelines, and that estimate is  
11 entitled to “appropriate deference.” U.S.S.G. § 2B1.1, Application Note 3(C).

12 If the Court determines that the defendant should be credited for the market value of the  
13 shares – by reducing the sales of each share by that market price to calculate illicit gain, then the  
14 Court's logic holds for the loss as well. The loss would also be the premium paid on the shares.  
15 Following the Court's logic, the loss becomes easily calculable – the number of shares sold  
16 multiplied by the illicit amount: the difference between the market price and the price paid.

17 Based upon the Declaration of Special Agent Bryant, therefore, if the Court uses the  
18 premium paid as a measure of the fraud by Autonomy on Hewlett-Packard, the Court should  
19 logically find that a reasonable estimate of the loss is approximately \$3.9 billion.

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28 <sup>1</sup> Of course, the government continues to maintain that it would be clear error to restrict  
the gain to only the gain to Hussain, rather than “the gain that resulted from the offense,” as  
plainly stated in the Application Note and as upheld by every case that has considered the issue.

**CONCLUSION**

For the reasons stated above, the government hereby respectfully requests that the Court find that the loss in this case is \$3.9 billion for the purpose of calculating the Sentencing Guidelines.

Dated: April 10, 2019

Respectfully Submitted,

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